

IN THE UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF ARKANSAS
FAYETTEVILLE DIVISION

MARK MILLER

PLAINTIFF

v.

Civil No. 06-5050

SHERIFF KEITH FERGUSON;
and DEPUTY BARRETT

DEFENDANTS

REPORT AND RECOMMENDATION OF THE MAGISTRATE JUDGE

Mark Miller filed this *pro se* civil rights action pursuant to 42 U.S.C. § 1983 on March 28, 2006. His complaint was filed *in forma pauperis* (IFP).

Defendants filed a motion for summary judgment (Doc. 23). To assist the plaintiff in responding to the motion, the undersigned prepared a questionnaire. On November 29, 2007, an order (Doc. 26) was entered directing Miller to complete, sign and return an attached questionnaire that would serve as his response to the summary judgment motion.

The plaintiff's response to the questionnaire was to be returned by December 28, 2007. To date, the plaintiff has failed to respond to the questionnaire. The court's order and attached questionnaire have not been returned as undeliverable. The order was mailed to the same address as the court's prior orders. Plaintiff has not informed the court of any change in his address. Plaintiff has not requested an extension of time to respond to the questionnaire.

I therefore recommend this case be dismissed with prejudice on the grounds Miller has failed to prosecute this action and comply with the order of the court. *See* Fed. R. Civ. P. 41(b). **The parties have ten days from receipt of the report and recommendation in which to file written objections pursuant to 28 U.S.C. § 636(b)(1). The failure to file timely objections may result in waiver of the right to appeal questions of fact. The parties are reminded that objections must be both timely and specific to trigger de novo review by the district court.**

DATED this 14th day of January 2008.

/s/ J. Marschewski
HON. JAMES R. MARSCHEWSKI
UNITED STATES MAGISTRATE JUDGE